

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

J. T. GLOVER, III,)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO. 03-11633-MAP
)	
GERALD MORRISSEY, ET AL,)	
Defendants)	

MEMORANDUM AND ORDER RE: REPORT AND RECOMMENDATION
WITH REGARD TO DEFENDANTS' MOTION TO DISMISS
(Docket Nos. 14 & 25)

September 28, 2004

PONSOR, D.J.

The plaintiff has brought consolidated civil rights actions docketed 03-11633-MAP and 03-30213-MAP, seeking damages against various individuals affiliated with the Massachusetts Department of Mental Retardation pursuant to 42 U.S.C. § 1983. Defendants have filed a Motion to Dismiss all claims as Docket No. 14 in C.A. 03-11633-MAP.

The court referred the defendants' Motion to Dismiss to Magistrate Judge Kenneth P. Neiman for Report and Recommendation and on April 29, 2004, the Magistrate Judge recommended that the motion be allowed in its entirety. At the same time, the Magistrate Judge allowed the defendants' Motions to Strike and denied the plaintiff's Motions to Amend. See Docket No. 26 in C.A. 03-11633-MAP and Docket No. 20 in C.A. 03-30213-MAP.¹

¹By separate memorandum, the court has determined that the Magistrate Judge's rulings on these two non-dispositive motions was not clearly erroneous or contrary to law. The plaintiff's objections to these rulings have therefore been overruled.

Following Magistrate Judge Nieman's rulings, the plaintiff filed his objections, and the defendants replied. The matter is now before this court for de novo review.

It is not necessary to re-plow the ground covered so scrupulously by the Magistrate Judge in his Report and Recommendation. Upon de novo review, the Report and Recommendation will be adopted. First, any claims against the defendants in their official capacities must be dismissed based on sovereign immunity. Second, with regard to the defendants in their individual capacities, the Motion to Dismiss must be allowed for failure to state a claim. As the Magistrate Judge points out, despite the complaint's length no specific facts are included from which any illegal motive may be inferred on the part of any of the defendants. Moreover, it would appear that the defendants in their individual capacities are entitled to dismissal based upon qualified immunity.

For all these reasons, set forth in meticulous detail in the Magistrate Judge's Report and Recommendation, the Report and Recommendation of Magistrate Judge Kenneth P. Neiman dated April 29, 2004 is hereby adopted. The defendants' Motion to Dismiss (Docket No. 14 in C.A. 03-11633-MAP) is hereby ALLOWED. This case may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge